

Form NLRB- 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER
SAN FRANCISCO, CA

DO NOT WRITE IN THIS SPACE

Case Date Filed

INSTRUCTIONS:

20-CA-230640 11/06/2018

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer ESP (Environmental Service Partners)		b. Tel. No. (650)655-4747
d. Address (street, city, state ZIP code) 2550 Barrington Ct, Hayward, CA 94545-1133		c. Cell No.
e. Employer Representative Francisco Miranda, Director of Operations and Business Development		f. Fax No.
i. Type of Establishment (factory, nursing home, hotel) Temporary Employment Agency		g. e-Mail
j. Principal Product or Service Labor		h. Dispute Location (City and State) San Francisco, CA
		k. Number of workers at dispute location 150

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(1) and 8(a)(3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On or about (b) (6), (b) (7)(C) 2018, I was terminated by ESP in retaliation for my union and/or protected concerted activities.

My (b) (6), (b) (7)(C) terminated me for this after a Marriott agents, and/or managers, and/or (b) (6), (b) (7)(C) reported to the Employer that I was seen engaging in union and/or protected concerted activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)

4a. Address (street and number, city, state, and ZIP code)

(b) (6), (b) (7)(C)

4b. Tel. No.

(b) (6), (b) (7)(C)

4c. Cell No.

(b) (6), (b) (7)(C)

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization).

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(b) (6), (b) (7)(C)

By: (b) (6), (b) (7)(C)
(signature of representative of person making charge)

(b) (6), (b) (7)(C) Individual

Office, if any, Cell No.

(b) (6), (b) (7)(C)

Print Name and Title

Fax No.

Address: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

Date: 11-06-2018

e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156



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November 7, 2018

Francisco Miranda, Director of Operations
Enviromental Service Partners
2550 Barrington Court
Hayward CA 94545-1133

Re: Enviromental Service Partners (ESP)
Case 20-CA-230640

Dear Mr. Miranda:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney MARTA I. NOVOA whose telephone number is (628)221-8865. If this Board agent is not available, you may contact Supervisory Attorney KATHLEEN C. SCHNEIDER whose telephone number is (628)221-8873.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate.** Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a

determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native

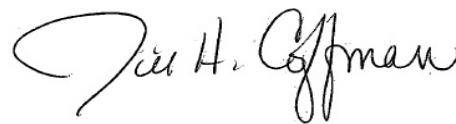
November 7, 2018

format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" and last name "Coffman" clearly distinguishable.

JILL H. COFFMAN
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



UNITED STATES GOVERNMENT
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Download
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Mobile App

November 7, 2018

(b) (6), (b) (7)(C)

Re: Enviromental Service Partners (ESP)
Case 20-CA-230640

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on November 06, 2018 has been docketed as case number 20-CA-230640. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney MARTA I. NOVOA whose telephone number is (628)221-8865. If this Board agent is not available, you may contact Supervisory Attorney KATHLEEN C. SCHNEIDER whose telephone number is (628)221-8873.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

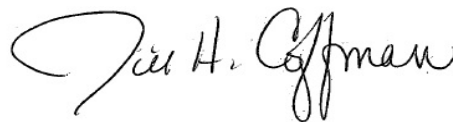
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Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill H. Coffman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

JILL H. COFFMAN
Regional Director

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

ENVIRONMENTAL SERVICE PARTNERS, INC.

and

(b) (6), (b) (7)(C) an Individual

Cases 20-CA-230220

and

20-CA-230640

(b) (6), (b) (7)(C) an Individual

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 20-CA-230220 and Case 20-CA-230640, which are based on a charge filed by **(b) (6), (b) (7)(C)**, an Individual **(b) (6), (b) (7)(C)** and a charge filed by **(b) (6), (b) (7)(C)**, an Individual **(b) (6), (b) (7)(C)**, respectively, against Environmental Service Partners, Inc. (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges Respondent has violated the Act as described below:

1. (a) The charge in Case 20-CA-230220 was filed by **(b) (6), (b) (7)(C)** on October 30, 2018, and a copy was served on Respondent by U.S. mail on October 31, 2018.

(b) The first-amended charge in Case 20-CA-230220 was filed by (b) (6), (b) (7)(C) on December 13, 2018, and a copy was served on Respondent by U.S. mail on December 17, 2018.

(c) The charge in Case 20-CA-230640 was filed by (b) (6), (b) (7)(C) on November 6, 2018, and a copy was served on Respondent by U.S. mail on November 7, 2018.

2. (a) At all material times, Respondent has been a California corporation with an office and place of business in Hayward, California and has been engaged in the business of providing janitorial and building services, including providing temporary janitorial services for the San Francisco Marriott Marquis property located at 55 Fourth Street, San Francisco, California (the Hotel).

(b) During the 12-month period ending October 31, 2018, Respondent, in conducting its operations described above in subparagraph 2(a), provided services valued in excess of \$50,000 for Marriott International, Inc. and its hotels, an enterprise directly engaged in interstate commerce.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the following individuals held the titles set forth opposite their respective names and have been supervisors and agents of Respondent ESP within the meaning of Sections 2(11) and 2(13) of the Act:

(b) (6), (b) (7)(C)

- (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

- (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (Last Name Unknown)

- (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (Last Name Unknown)

- (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

- (b) (6), (b) (7)(C)

5. On or about October 30, 2018, Respondent, by (b) (6), (b) (7)(C) (Last Name Unknown), at the Hotel, directed employees not to speak with union representatives.

6. On or about (b) (6), (b) (7)(C) 2018,

(a) (b) (6), (b) (7)(C) spoke with a union representative outside of the Hotel;

(b) (b) (6), (b) (7)(C) and other Respondent employees engaged in concerted activities for the purposes of mutual aid and protection by speaking with a newspaper reporter outside of the Hotel; and

(c) Respondent discharged (b) (6), (b) (7)(C).

7. On or about (b) (6), (b) (7)(C) 2018, Respondent discharged (b) (6), (b) (7)(C)

8. Respondent engaged in the conduct described above in subparagraph 6(c) because (b) (6), (b) (7)(C) spoke with a union representative and to discourage employees from engaging in these activities.

9. Respondent engaged in the conduct described above in paragraph 7 because (b) (6), (b) (7)(C) engaged in the conduct described above in subparagraph 6(b) and to discourage employees from engaging in these or other concerted activities.

10. By the conduct described above in paragraphs 5, 7 and 9 Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act.

11. By the conduct described in paragraphs 6(a) and 6(c) and 8, Respondent has been discriminating regarding the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in or activity with a labor organization in violation of Section 8(a)(1) and (3) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 5 through 10, the General Counsel seeks an Order requiring that Respondent mail Notices in English and Spanish to its employees who worked at the Hotel between October 4 and December 4, 2018.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before January 3, 2019, or postmarked on or before January 2, 2019**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused

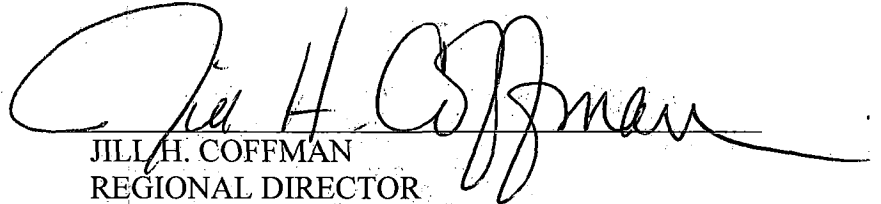
on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT at 9:00 a.m. on March 5, 2019, at the Natalie P. Allen Courtroom, 901 Market Street, Suite 400, San Francisco, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Environmental Service Partners, Inc.
20-CA-230220, 20-CA-230640

Dated: December 20, 2018

A handwritten signature in black ink, appearing to read "Jill H. Coffman", is written over a horizontal line.

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Attachments

1 STEPHAN A. BARBER (SBN 70070)
2 JRG ATTORNEYS AT LAW
3 318 Cayuga Street
4 Salinas, CA 93901
5 Telephone: (831) 754-2444
6 Facsimile: (831) 269-7143
7 Email: steve@jrgattorneys.com

8 Attorneys for
9 ENVIRONMENTAL SERVICE PARTNERS, INC.

10 UNITED STATES OF AMERICA
11 BEFORE THE NATIONAL LABOR RELATIONS BOARD, REGION 32

12 ENVIRONMENTAL SERVICE
13 PARTNERS, INC.

14 and

15 (b) (6), (b) (7)(C) an Individual

16 and

17 (b) (6), (b) (7)(C) an Individual

CASE NO. 20-CA-230220 and 20-CA-230640

18 ANSWER OF ENVIRONMENTAL
19 SERVICE PARTNERS, INC. TO
20 CONSOLIDATED COMPLAINT AND
21 NOTICE OF HEARING

22 COMES NOW ENVIRONMENTAL SERVICE PARTNERS, INC., a California
23 corporation ("ESP"), and in answer to the NLRB's Consolidated Complaint and Notice of
24 Hearing, admits, denies, and alleges as follows:

25 1. ESP admits that said Consolidated Complaint and Notice of Hearing is based on a
26 charge and first amended charge filed by (b) (6), (b) (7)(C) an individual; and a charge filed by
27 (b) (6), (b) (7)(C) an individual. ESP also admits that said Consolidated Complaint is issued pursuant
28 to Section 10(b) of the Act and section 102.15 of the Rules and Regulations of the Board. ESP
denies that it has violated the Act as alleged in said Consolidated Complaint.

2. ESP admits the allegations of paragraph 2(a), (b), and (c) of said Consolidated
Complaint. ESP denies the claims made by the Charging Party.

3. ESP admits the allegations of paragraph 3(a), (b), and (c) of said Consolidated

1 Complaint.

2 4. ESP denies the allegations of paragraph 4 of said Consolidated Complaint.

3 5. ESP denies the allegations of paragraph 5 of said Consolidated Complaint.

4 6. ESP denies the allegations, implications, and misstatements in paragraph 6(a), (b),
5 and (c) of said Consolidated Complaint.

6 7. ESP denies the allegations of paragraph 7 of said Consolidated Complaint.

7 8. ESP denies the allegations of paragraph 8 of said Consolidated Complaint.

8 9. ESP denies the allegations of paragraph 9 of said Consolidated Complaint.

9 10. ESP denies the allegations of paragraph 10 of said Consolidated Complaint.

10 11. ESP denies the allegations of paragraph 11 of said Consolidated Complaint.

11 12. ESP denies the allegations of paragraph 12 of said Consolidated Complaint.

12 13. AS AND FOR A FIRST AFFIRMATIVE DEFENSE, ESP alleges that said
13 Consolidated Complaint does not support recovery under the Act because some or all of such
14 allegations fail to state a claim.

15 14. AS AND FOR A SECOND AFFIRMATIVE DEFENSE, ESP alleges that it had
16 the legal right under California law to terminate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) employment and that the Act
17 does not preempt or supersede California law. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were at-will employees who
18 could be terminated without cause and the NLRB has no right or justification to interfere with or
19 attempt to control ESP's employment practices.

20 15. AS AND FOR A THIRD AFFIRMATIVE DEFENSE, ESP alleges that some or
21 all of the allegations in said Consolidated Complaint fall outside the scope of the underlying
22 Charges.

23 16. AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, ESP alleges that said
24 Consolidated Complaint is so vague and lacking in detail that ESP is unable to understand the
25 charges and issues to be considered at the hearing.

26 17. AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, ESP alleges that it did not
27 unlawfully discourage its employees from engaging in protected concerted activities.
28

1 18. AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, ESP alleges that it did not
2 treat employees allegedly engaged in protected activity any differently than employees who did
3 not engage in protected activity.

4 19. AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, ESP alleges that the
5 portions of the Act relied upon by the NLRB have no application to employers who do not
6 employ union employees and whose employees have no collective bargaining agreement.

7 20. AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, ESP alleges that
8 Respondent was directed and instructed by Marriott Hotels, the special employer of (b) (6), (b) (7)(C) and
9 (b) (6), (b) (7)(C) that they were not to return to any Marriott property for reasons known to Marriott. ESP
10 had no choice but to follow Marriott's instructions as Marriott as Marriott ultimately paid the
11 wages of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)


12 21. AS AND FOR A NINTH AFFIRMATIVE DEFENSE, ESP alleges that both
13 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) asked for final paychecks after being informed that Marriott did not want them
14 to return. ESP gave them their final paychecks as requested. ESP offered alternative
15 employment to (b) (6), (b) (7)(C) which (b) (6), (b) (7)(C) rejected.

16 22. ESP reserves all affirmative defenses which may apply to the allegations of said
17 Consolidated Complaint.

18 WHEREFORE, ESP prays that said Consolidated Complaint be dismissed and that no
19 relief be granted against ESP.

20
21 Dated: January 3, 2019

JRG ATTORNEYS AT LAW

22
23 By: 
24 Stephan A. Barber
25 Attorneys for Environmental Service
26 Partners, Inc.
27
28

1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and employed in the County of Monterey, State of
3 California. I am over the age of 18 and not a party to the within action; my business address is:
4 318 Cayuga Street, Salinas, California 93901.

5 On this date, I served the foregoing documents: **ANSWER OF ENVIRONMENTAL**
6 **SERVICE PARTNERS, INC. TO CONSOLIDATED COMPLAINT AND NOTICE OF**
7 **HEARING** on the interested party listed below in this action as follows:

8 Jill H. Coffman
9 Regional Director
NLRB, Region 20
10 901 Market Street, Suite 400
San Francisco, CA 94103-1738

Marta Novoa
Field Attorney
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
Marta.Novoa@nrlb.gov

11
12 (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

13
14 Francisco Miranda
15 Director of Operations and Business
Development
16 Environmental Service Partners, Inc.
2550 Barrington Court
17 Hayward, CA 94545-1133

18 **X BY U.S. MAIL:** By placing a copy(ies) thereof in a sealed envelope(s) addressed to the
19 above-listed person(s) and place(s) of business. I am "readily familiar" with the firm's practice of
20 collection and processing correspondence for mailing. Under that practice, it would be deposited
21 with the United States postal service on that same day with postage thereon fully prepaid at
Salinas, California in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

22 **X BY ELECTRONIC MAIL:** The above-referenced document(s) was transmitted via
23 electronic mail via my electronic service address (liz@jrgattorneys.com) to the **NRLB** only. I did
not receive, within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on January 3, 2019, at Salinas, California.

26
27 
Liz Tiliaia
28

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

ENVIRONMENTAL SERVICE PARTNERS, INC.

and

(b) (6), (b) (7)(C), an Individual

Cases 20-CA-230220

and

20-CA-230640

(b) (6), (b) (7)(C), an Individual

AMENDMENT TO CONSOLIDATED COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), IT IS ORDERED that the Consolidated Complaint and Notice of Hearing issued on December 20, 2018, be amended to replace paragraph 5 with the following:

5. (a) On or about **(b) (6), (b) (7)(C)**, 2018, Respondent, by **(b) (6), (b) (7)(C)** (Last Name Unknown), at the Hotel:

- (i) Directed employees not to speak with union representatives;
- (ii) Interrogated employees about discussing their working conditions with union representatives; and,
- (ii) Interrogated employees about discussing their working conditions with the press.

(b) On or about **(b) (6), (b) (7)(C)**, 2018, Respondent, by **(b) (6), (b) (7)(C)** **[REDACTED]** at the Hotel, interrogated employees about discussing their working conditions with union representatives.

(c) On or about (b) (6), (b) (7)(C), 2018, Respondent, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) at the bus stop in Salinas, informed employees that they could no longer work for Respondent because they had spoken with the press and other employees about their working conditions.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amendment to Consolidated Complaint. The answer must be **received by this office on or before February 28, 2019, or postmarked on or before February 27, 2019**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

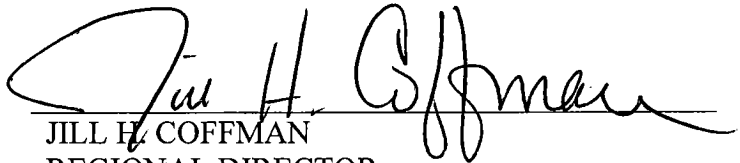
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file

containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amendment to Consolidated Complaint are true.

NOTICE OF HEARING

AS PREVIOUSLY NOTICED, at 9:00 a.m. on March 5, 2019, at the Natalie P. Allen Courtroom, 901 Market Street, Suite 400, San Francisco, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Amendment to Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 14, 2019

A handwritten signature in black ink, appearing to read "Jill H. Coffman", written over a horizontal line.

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

ENVIRONMENTAL SERVICE PARTNERS, INC.

and

Case 20-CA-230220
20-CA-230640

(b) (6), (b) (7)(C) **an Individual**


and

(b) (6), (b) (7)(C) **an Individual**

ORDER RESCHEDULING HEARING

Pursuant to Section 102.16(a)(1), IT IS HEREBY ORDERED that the hearing in the above matter now scheduled for **March 5, 2019**, is rescheduled to **April 2, 2019**, and consecutive days thereafter, at 9:00 a.m., at the Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400, San Francisco, California.

DATED AT San Francisco, California, this 20th day of February, 2019.



Jill H. Coffman, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103

1 STEPHAN A. BARBER (SBN 70070)
2 JRG ATTORNEYS AT LAW
3 318 Cayuga Street
4 Salinas, CA 93901
5 Telephone: (831) 754-2444
6 Facsimile: (831) 269-7143
7 Email: steve@jrgattorneys.com

8 Attorneys for
9 ENVIRONMENTAL SERVICE PARTNERS, INC.

10 UNITED STATES OF AMERICA
11 BEFORE THE NATIONAL LABOR RELATIONS BOARD, REGION 32

12 ENVIRONMENTAL SERVICE
13 PARTNERS, INC.

CASE NO. 20-CA-230220 and 20-CA-230640

14 and

15 (b) (6), (b) (7)(C) an Individual

16 ANSWER TO CONSOLIDATED
17 COMPLAINT AS AMENDED

18 and

19 (b) (6), (b) (7)(C) an Individual

20 COMES NOW ENVIRONMENTAL SERVICE PARTNERS, INC., a California
21 corporation ("ESP"), and in answer to the NLRB's Consolidated Complaint as amended, admits,
22 denies, and alleges as follows:

23 1. ESP admits that said Consolidated Complaint and Notice of Hearing is based on a
24 charge and first amended charge filed by (b) (6), (b) (7)(C) an individual; and a charge filed by
25 (b) (6), (b) (7)(C) an individual. ESP also admits that said Consolidated Complaint is issued pursuant
26 to Section 10(b) of the Act and section 102.15 of the Rules and Regulations of the Board. ESP
27 denies that it has violated the Act as alleged in said Consolidated Complaint.

28 2. ESP admits the allegations of paragraph 2(a), (b), and (c) of said Consolidated
Complaint. ESP denies the claims made by the Charging Party.

3. ESP admits the allegations of paragraph 3(a), (b), and (c) of said Consolidated

1 Complaint.

2 4. ESP denies the allegations of paragraph 4 of said Consolidated Complaint.

3 5. ESP denies the allegations of paragraph 5(a) through (c), as amended, of said
4 Consolidated Complaint.

5 6. ESP denies the allegations, implications, and misstatements in paragraph 6(a), (b),
6 and (c) of said Consolidated Complaint.

7 7. ESP denies the allegations of paragraph 7 of said Consolidated Complaint.

8 8. ESP denies the allegations of paragraph 8 of said Consolidated Complaint.

9 9. ESP denies the allegations of paragraph 9 of said Consolidated Complaint.

10 10. ESP denies the allegations of paragraph 10 of said Consolidated Complaint.

11 11. ESP denies the allegations of paragraph 11 of said Consolidated Complaint.

12 12. ESP denies the allegations of paragraph 12 of said Consolidated Complaint.

13 13. AS AND FOR A FIRST AFFIRMATIVE DEFENSE, ESP alleges that said
14 Consolidated Complaint does not support recovery under the Act because some or all of such
15 allegations fail to state a claim.

16 14. AS AND FOR A SECOND AFFIRMATIVE DEFENSE, ESP alleges that it had
17 the legal right under California law to terminate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) employment and that the Act
18 does not preempt or supersede California law. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were at-will employees who
19 could be terminated without cause and the NLRB has no right or justification to interfere with or
20 attempt to control ESP's employment practices.

21 15. AS AND FOR A THIRD AFFIRMATIVE DEFENSE, ESP alleges that some or
22 all of the allegations in said Consolidated Complaint fall outside the scope of the underlying
23 Charges.

24 16. AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, ESP alleges that said
25 Consolidated Complaint is so vague and lacking in detail that ESP is unable to understand the
26 charges and issues to be considered at the hearing.

27 17. AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, ESP alleges that it did not
28 unlawfully discourage its employees from engaging in protected concerted activities.

1 18. AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, ESP alleges that it did not
2 treat employees allegedly engaged in protected activity any differently than employees who did
3 not engage in protected activity.

4 19. AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, ESP alleges that the
5 portions of the Act relied upon by the NLRB have no application to employers who do not
6 employ union employees and whose employees have no collective bargaining agreement.

7 20. AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, ESP alleges that
8 Respondent was directed and instructed by Marriott Hotels, the special employer of (b) (6), (b) (7)(C) and
9 (b) (6), (b) (7)(C) that they were not to return to any Marriott property for reasons known to Marriott. ESP
10 had no choice but to follow Marriott's instructions as Marriott as Marriott ultimately paid the
11 wages of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)


12 21. AS AND FOR A NINTH AFFIRMATIVE DEFENSE, ESP alleges that both
13 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) asked for final paychecks after being informed that Marriott did not want them
14 to return. ESP gave them their final paychecks as requested. ESP offered alternative
15 employment to (b) (6), (b) (7)(C) which (b) (6), (b) (7)(C) rejected.

16 22. ESP reserves all affirmative defenses which may apply to the allegations of said
17 Consolidated Complaint.

18 WHEREFORE, ESP prays that said Consolidated Complaint be dismissed and that no
19 relief be granted against ESP.

20 Dated: February 28, 2019

JRG ATTORNEYS AT LAW

21
22
23 By: 
24 Stephan A. Barber
25 Attorneys for Environmental Service
26 Partners, Inc.
27
28

1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and employed in the County of Monterey, State of
3 California. I am over the age of 18 and not a party to the within action; my business address is:
4 318 Cayuga Street, Salinas, California 93901.

5 On this date, I served the foregoing documents: **ANSWER TO CONSOLIDATED**
6 **COMPLAINT AS AMENDED** on the interested party listed below in this action as follows:

7 Jill H. Coffman
8 Regional Director
9 NLRB, Region 20
10 901 Market Street, Suite 400
11 San Francisco, CA 94103-1738

Matt Peterson
Field Attorney
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
Matt.Peterson@nrlb.gov

12 (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

13 Francisco Miranda
14 Director of Operations and Business
15 Development
16 Environmental Service Partners, Inc.
2550 Barrington Court
Hayward, CA 94545-1133

17 **X BY U.S. MAIL:** By placing a copy(ies) thereof in a sealed envelope(s) addressed to the
18 above-listed person(s) and place(s) of business. I am "readily familiar" with the firm's practice of
19 collection and processing correspondence for mailing. Under that practice, it would be deposited
20 with the United States postal service on that same day with postage thereon fully prepaid at
Salinas, California in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

21 **X BY ELECTRONIC MAIL:** The above-referenced document(s) was transmitted via
22 electronic mail via my electronic service address (liz@jrgattorneys.com) to the **NRLB** only. I did
23 not receive, within a reasonable time after the transmission, any electronic message or other
24 indication that the transmission was unsuccessful.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on February 28, 2019, at Salinas, California.

27 
28 Liz Tiliala